

Rights Of Offender
To Preliminary and Revocation
Hearing

SEAL

Department of Corrections
Board of Probation and Parole
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This booklet has been revised and amended as a result of changes in several Statutes and Board policies. The previous booklet of a similar nature issued in (March, 1992) is obsolete.

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INTRODUCTION

This booklet is designed to provide information and set out the rights of individuals who have been placed on probation, parole, or conditional release and who have become involved in alleged violations of the conditions of probation, parole, or conditional release.

Information contained in this booklet has been derived from Statutes of the State of Missouri, Court decisions, Attorney General's Opinions, rules of the Courts and policies of the Board of Probation and Parole.

ARREST AND DETENTION

The Missouri Revised Statutes 217.720 and 217.722 authorize a Probation and Parole Officer to issue a warrant for an offender under their supervision if they determine that there is probable cause to believe that the offender has violated one or more of the conditions of supervision. These statutes set out the authority as well as the various methods available to the officer to handle violations, including the appropriate due process requirements applicable to offenders who are in violation of their supervision conditions.

These statutes provide that any Probation and Parole Officer who has probable cause to believe that the offender on probation, parole, or conditional release has violated a condition of probation, parole, or conditional release, may issue a warrant for the arrest of the offender. The Probation and Parole Officer may effect the arrest or may deputize any other officer with the power of arrest to do so by giving the officer a copy of the warrant, which shall outline the circumstances of the alleged violations containing the statement that the offender has, in the judgment of the Probation and Parole Officer, violated conditions of probation, parole, or conditional release.

The warrant delivered with the offender by the arresting officer to the official in charge of any jail or other detention facility shall be sufficient legal authority for detaining the offender pending a preliminary hearing on the alleged violation. The arrested offender will be delivered a copy of the warrant at the time of the arrest or as soon as possible thereafter.

PRELIMINARY HEARING

A preliminary hearing is an informal hearing to determine whether there is probable cause to believe that a violation occurred. Any probationer, parolee, or conditional releasee who has allegedly violated the conditions of probation, parole or conditional release and is in custody based upon a warrant for said violations, has a right to a preliminary hearing. The Board may also order a preliminary hearing when a parolee or a conditional releasee is not in custody on a parole or conditional release warrant, but revocation is being pursued.

The offender shall have an opportunity to indicate his/her desire for a preliminary hearing by signing a "Request for or Waiver of Preliminary Hearing" form. If the offender requests a hearing or desires to waive the hearing, he/she will designate this desire by checking the appropriate box and by signing this form in the proper place. If the right to the preliminary hearing is waived, the right to a revocation hearing before the Parole Board or Court is not affected.

The preliminary hearing is mandatory in cases of the violation of condition #1, LAWS with no new conviction, or violation of condition #1 and related technical violation(s) only, when there is no admission by the parolee or conditional releasee that any of the violation(s) occurred. At these types of hearings, the adverse witness' testimony and cross-examination will be recorded on audio tape and forwarded to the Missouri Board of Probation and Parole.

An Interstate case under supervision has the same opportunity to indicate his/her desire for a preliminary hearing. All requests by the sending state to hold a preliminary hearing will be honored, except where a waiver admitting the fact(s) of the violation(s) has been executed. The

admission must be entered and signed by the offender on the "Request or Waiver of Preliminary Hearing" form. Otherwise, the hearing must be held.

If a preliminary hearing is to be held, the offender will receive reasonable notice of preliminary hearing from a Probation and Parole Officer. The notice will set out the date, time, location of the hearing, and the hearing officer. In no case will the officer holding the hearing be the Probation and Parole Officer of the offender or that officer's immediate supervisor. The notice will also outline the alleged violations of the conditions of probation, parole, or conditional release.

The preliminary hearing will be held reasonably near the place of the alleged violation or arrest as soon as possible to determine whether there is probable cause to believe the offender has violated the conditions of probation, parole, or conditional release. This is an informal inquiry and is not to be confused with a final revocation hearing.

It will be the responsibility of the offender to produce his/her own witnesses. If in custody, he/she is entitled to ample opportunity by the detaining authority to make such contacts as may be necessary to assure the appearance of the witnesses. The hearing officer does not have subpoena power, nor the funds to assure the appearance of any witness for the preliminary hearing, or to pay any other expenses incurred by the offender in preparation for or resulting from the preliminary hearing.

The hearing officer shall be in charge of the hearing. Only the offender and the hearing officer will be present, unless the hearing officer determines another person, i.e.: a security officer, interpreter, etc. should be in attendance. Only one witness should be allowed in the hearing room at a time. The hearing officer will initiate all questioning of the witnesses followed by the offender's cross-examination. The offender will have ample time to question the witnesses. The hearing officer, however, may terminate questioning if the testimony becomes irrelevant, repetitious, or excessive.

At the hearing the offender has the following rights:

(1) the offender may present his/her own testimony in regard to the alleged violation, as well as present any documents or other evidence of mitigating circumstances, which may address the violation;

(2) the offender may present his/her own witnesses who can give relevant information concerning this violation. These witnesses cannot be character witnesses;

(3) the offender may confront or cross-examine any adverse witness unless the hearing officer determines that the witness may be subject to risk.

(4) as the preliminary hearing is an informal review to establish probable cause only, attorneys do not have a role to play in this particular process. Generally, any request to have an attorney present shall be denied. The only exception shall be when the hearing officer has reason to believe that the offender is incapable of understanding the proceedings;

(5) upon completion of the preliminary hearing, the hearing officer will forward a written report to the Parole Board or the Court for further action. The offender will receive a copy of the report as soon as possible.

In a probation case when the sentencing Court is immediately available, that Court may hold a combined preliminary and revocation hearing. Also, the preliminary hearing may be held by a judge having criminal jurisdiction in the county where the alleged violation or arrest

occurred. When either occurs, the hearing shall be governed by the rules of that Court. The same rights which were previously stated, however, shall apply.

BOND ELIGIBILITY-PROBATION ONLY

A probationer who is in custody for alleged violations is eligible for release on bond as set by the Court. This applies only to probationers and not parolees or conditional releasees.

REVOCATION HEARING

When revocation is being pursued, any probationer, parolee, or conditional releasee who has allegedly violated the conditions of probation, parole, or conditional release has the right to a revocation hearing before the authority that originally granted the probation, parole, or conditional release. The hearing will be held within a reasonable time after the offender has been made available to the granting authority either by his/her return to the Missouri Department of Corrections for his/her appearance before the Parole Board or his/her return to the jurisdiction of the Court.

The offender may waive the right to a revocation hearing. Parolees and conditional releasees from the Missouri Department of Corrections will be contacted by an Institutional Parole Officer who shall make available to him/her the "Request for or Waiver of Revocation Hearing" form. He/she will sign this form indicating his/her desire. Probationers or parolees under the authority of the Court will be given an opportunity to appear before the Court and to make their desires known at that time. Some Courts may not allow the offender to waive the revocation hearing. In these cases the hearing will be held at the instruction of the Court.

At the revocation hearing the offender has the following rights:

- 1) the offender may present his/her own testimony regarding violation and may present documents, evidence, or mitigating circumstances which may throw light on the violation;
- 2) the offender may present witnesses who have relevant information concerning the violation(s) and/or consideration for revocation;
- 3) the offender may confront and cross-examine any adverse witness, unless the Board or Court finds good cause for not allowing confrontation or cross-examination;
- 4) the parolee or conditional releasee may have a representative of their choice at the revocation hearing before the Parole Board. The representative may include a family member, a friend, an employer or legal counsel;
- 5) at parole and conditional release revocation hearings the offender, if found to be indigent may be provided legal counsel;
- 6) at probation/Court parole revocation hearings the offender, if found to be indigent, may have legal counsel as provided by the rules of the Court;
- 7) if the offender appears to be incapable of representing himself/herself, legal counsel may be provided; and
- 8) a statement by the Court or the Board as to the evidence relied on and reasons for revoking shall be supplied to the probationer, parolee or conditional releasee.

It will be the offender's responsibility to produce his/her own witnesses and to pay any expenses incurred in preparation for or resulting from the hearing. He/She will be given an opportunity by officials to make such contacts as may be necessary to assure the appearance of any witness.

REVOCATION DECISION-BOARD

After the revocation hearing, the Parole Board will reach a decision within a reasonable amount of time. The offender will receive a written notice of the Board's action as soon as the notice can be prepared and delivered. The following is a list of possible decisions the Board may make. The list, however, does not exhaust the decisions open to the Board.

The Board may:

- 1) request additional information by means of various types of reports from the supervising probation and parole officer, consulting psychologist or psychiatrist or any other party or agency that may be able to supply additional information regarding the violations;
- 2) schedule the offender for another personal hearing before the Board to further assess the violations;
- (3) revoke and schedule the offender for either a hearing or release as follows:
 - a) if the remaining time on the sentence from the date of revocation of parole or conditional release is less than twelve (12) months, it is very likely that the Board will give a complete denial; or
 - b) if the remainder of the sentence is more than twelve (12) months from the date of revocation, the Board may schedule a hearing within one (1) year, or
- (4) not revoke, but consider the offender for reinstatement on supervision or placement in a community corrections program. The release will occur as soon as a satisfactory plan is approved by the Parole Board.

When an offender returns with a new sentence to the Missouri Department of Corrections, the hearing will be held in accordance with Board policy. If brought back as a parole violator, the offender is not eligible for conditional release. He/She may, however, be considered for parole at a later time. Conditional releasees may be revoked by the Board following the same procedure as for an alleged parole violator. Following revocation, an offender may never be reinstated on conditional release but he/she may be paroled at any such time deemed appropriate by the Parole Board.

TIME ACCREDITED-BOARD

All time served within the Missouri Department of Corrections and under direct supervision is accredited as time served on the sentence.

Missouri Revised Statutes 217.720 sets out restrictions regarding the time allowed on sentences. For those offenders who were arrested for a crime while on parole or conditional

release and received a conviction and sentence and this was served outside the Missouri Department of Corrections, RSMo. 217.720(2) reads as follows:

“...If at any time during release on parole or conditional release the offender is arrested for a crime which later leads to conviction, and sentence is then served outside the Missouri Department of Corrections, the board shall determine what part, if any, of the time from the date of arrest until completion of the sentence imposed is counted as time served under the sentence from which the offender was paroled or conditionally released.”

In consideration of this statute, an offender's time stops at the date of arrest and does not begin again until he/she has completed the sentence received. Once the sentence is complete, his/her time will begin again and will be accredited as time served on his/her sentence.

Section 217.720(3) RSMo. relates to those who have absconded while under parole supervision. The Statute reads as follows:

"An offender for whose return a warrant has been issued by the board shall, if it is found that the warrant cannot be served, be deemed to be a fugitive from justice or to have fled from justice. If it shall appear that the offender has violated the provisions and conditions of his parole or conditional release, the board shall determine whether the time from the issuing date of the warrant to the date of his arrest on the warrant, or continuance on parole or conditional release shall be counted as time served under the sentence..."

In both cases of the offender who serves a sentence outside the Missouri Department of Corrections and the absconder, it will be discretionary with the Parole Board as to whether or not any part of that time is accredited against the offender's sentence.

In case of consecutive sentences, time is accredited as in any other case. If one parole or conditional release is revoked and there are other remaining consecutive paroles or conditional releases granted, all are automatically revoked.

"If a person released from imprisonment on parole or serving a conditional release term violates any of the conditions of his parole or release, he may be treated as a parole violator. If the board of probation and parole revokes the parole or conditional release, the paroled person shall serve the remainder of the prison term and conditional release term, as an additional prison term, and the conditionally released person shall serve the remainder of the conditional release term as a prison term, unless released on parole. (RSMo. 558.031(5))"

REVOCATION DECISION-COURT

Per 559.036 RSMo, the power of the Court to revoke probation/court parole shall extend for the duration of the term of probation/court parole designated by the Court and for any further

period which is reasonably necessary for the adjudication of matters arising before its expiration, provided that, some affirmative manifestation of an intent to conduct a revocation hearing occurs prior to the expiration of the period.

The Court, at the conclusion of the revocation hearing, may immediately advise of the decision made by the Court in the case or may take the case under advisement and rule within a reasonable time. The Court has discretion in what action may be taken with regard to the violation. Following are some examples of dispositions available to the Court. The list, however, does not exhaust the decisions open to the Court.

The Court may:

- 1) order the continuance of the probation or court parole, causing the continuance of supervision by the Missouri Board of Probation and Parole;
- 2) order continuance of probation or court parole under such new conditions as the Court may prescribe;
- 3) revoke the probation or court parole and order that any authorized disposition available under 557.011 RSMo. including a new term of probation supervision;
- 4) sentence under 217.362 RSMo., 217.378 RSMo. or 559.115 RSMo., with consideration for probation; or
- 5) relieve the offender of court parole or probation supervision and issue a final discharge.

TIME ACCREDITED-COURT

The Court may reduce the prison or jail term by all or part of the time the probationer serves on probation.